

Third Supplement to Memorandum 94-11

Administrative Adjudication: Exemption Request of Department of Corrections and Related Entities

Attached to this Supplement is a letter from the Department of Corrections requesting an exemption from the proposed new Administrative Procedure Act for themselves and for the Board of Prison Terms, Youth Authority, Youthful Offender Parole Board, and Narcotic Addict Evaluation Authority. Also attached are the applicable statutes. The department's arguments for exemption are discussed below.

The existing APA does not apply to hearings by the Department of Corrections or related entities. Gov't Code § 11501. The department acknowledges that due process requires a hearing in administrative actions affecting the rights of inmates, wards, civil addicts, and parolees, but argues that a formal APA-type hearing is inappropriate.

The department is concerned the draft statute is not well-tailored to parole hearings. The department says that in such proceedings, the parolee is the only party. Under case law and department regulations, a prisoner not serving a life sentence (Pen. Code § 3042 — Exhibit, p. 9) has only a limited right to representation by counsel in parole hearings. There is no lawyer representing the state. The draft statute provides venue rules, but the department says hearings are generally held in the institution where the parolee is held. The draft statute contemplates the filing and service of pleadings. The department notes that pleadings are not used in parole hearings. The department argues that the time periods in the draft statute — responsive pleading within 15 days after service of the initial pleading, notice of hearing at least 15 days before the hearing, proposed decision within 100 days after case is submitted — are too long in view of existing practice.

The draft statute contemplates a proposed decision stating its factual and legal basis which is served on each party. The proposed decision is followed by a final decision, also served on each party. A party may petition the agency for administrative review of the decision, or the agency may do so on its own motion. A transcript may be ordered and the matter may be briefed and argued.

Parole decisions are less formal. The board sets a parole date and sends the prisoner a written statement with the date. Any person on the hearing panel may request review of a parole decision by the full board. The Governor may also review parole decisions. If the Governor reverses or modifies a parole decision, the Governor sends a written statement to the inmate with reasons. Pen. Code §§ 3041-3041.2 (Exhibit, pp. 6-7).

It is a partial answer to say the department may vary most of these provisions by regulation. For example, the draft statute permits regulations to vary the provisions for commencement of an adjudicative proceeding if it is not required to be conducted by an administrative law judge from the Office of Administrative Hearings. See proposed Gov't Code § 642.110. For adults, parole revocation proceedings may be conducted by one board member (Pen. Code § 3063.6 — Exhibit, p. 12), but parole release hearings are conducted by a panel of at least two board members (Pen. Code § 3041 — Exhibit, p. 6). The Commission is not recommending expansion of the use of central panel administrative law judges. Thus the department by regulation will be able to make inapplicable or vary the chapter on commencement of proceedings, including the requirement of pleadings and their time limits, venue rules, time for notice, and the time for issuing a proposed and final decision. But unless the department is either exempted from the APA or protected by a specific statutory provision, it may not by regulation take away the APA right to counsel or (except for governing time periods) vary the provisions for issuing and reviewing a decision.

The staff is concerned about granting a statutory right to counsel in parole hearings where such a right does not now exist. It has been said that the participation of counsel is undesirable in most parole revocation hearings, and that it would significantly alter the nature of the proceeding resulting in longer hearings, more extensive records, and increased financial cost to the state. *In re Love*, 11 Cal. 3d 179, 188, 191, 520 P.2d 713, 113 Cal. Rptr. 89 (1974). The staff believes that such an expansion of the right to counsel in parole hearings would be unacceptable to the Legislature.

Rather than giving parole authorities an exemption from the APA, we could provide in the Penal Code that the right to counsel in the APA does not apply to parole hearings. Such a statute would prevail over the APA provision. See proposed Gov't Code § 612.150. But the department would still need to adopt regulations to vary the other APA provisions that appear inappropriate for parole hearings, such as those governing pleadings, venue, and time periods.

Staff Recommendation

The department argues that so few of the new provisions are appropriate for parole hearings that "the cost of designing and adopting exempting regulations would far outweigh any overall benefit to the administrative adjudication process." This fact, together with the need to provide by statute that the APA right to counsel does not apply to parole hearings and the need to preserve the existing system for issuing and reviewing parole decisions, militates in favor of continuing the exemption from the APA now enjoyed by the Department of Corrections and related parole authorities. Accordingly, the staff recommends the Commission approve the exemption by adding the following sections:

Pen. Code § 3066 (added). Administrative Procedure Act inapplicable

3066. Part 4 (commencing with Section 641.110) of Division 3.3 of Title 1 of the Government Code does not apply to a parole hearing or other adjudication concerning rights of an inmate or parolee conducted by the Department of Corrections or the Board of Prison Terms.

Comment. Section 3066 makes clear that the adjudicative provisions of the Administrative Procedure Act do not apply to a parole hearing or other adjudication of rights of an inmate or parolee conducted by the Department of Corrections or the Board of Prison Terms. Nothing in this section is intended to excuse compliance with procedural protections otherwise required by due process of law.

Welf. & Inst. Code § 1768.1 (added). Administrative Procedure Act inapplicable

1768.1. Part 4 (commencing with Section 641.110) of Division 3.3 of Title 1 of the Government Code does not apply to a parole hearing or other adjudication concerning rights of a person committed to the control of the Youth Authority conducted by the Youth Authority or the Youthful Offender Parole Board.

Comment. Section 1768.1 makes clear that the adjudicative provisions of the Administrative Procedure Act do not apply to a parole hearing or other adjudication of rights of a ward conducted by the Youth Authority or the Youthful Offender Parole Board. Nothing in this section is intended to excuse compliance with procedural protections otherwise required by due process of law.

Welf. & Inst. Code § 3158 (added). Administrative Procedure Act inapplicable

3158. Part 4 (commencing with Section 641.110) of Division 3.3 of Title 1 of the Government Code does not apply to a release hearing or other adjudication concerning rights of a person committed to the custody of the Director of Corrections conducted by the Narcotic Addiction Evaluation Authority.

Comment. Section 1768.1 makes clear that the adjudicative provisions of the Administrative Procedure Act do not apply to a parole hearing or other adjudication of rights of a civil addict conducted by the Narcotic Addiction Evaluation Authority. Nothing in this section is intended to excuse compliance with procedural protections otherwise required by due process of law.

Respectfully submitted,

Robert J. Murphy
Staff Counsel

STATE OF CALIFORNIA-YOUTH AND ADULT CORRECTIONAL AGENCY

PETE WILSON, Governor

DEPARTMENT OF CORRECTIONS

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Law Revision Commission
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August 30, 1993

Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: LAW REVISION COMMISSION ADMINISTRATIVE ADJUDICATION PROPOSALS

Dear Commissioners:

Thank you for the opportunity to comment on the California Law Revision Commission's "Tentative Recommendation" regarding legislative reform of Administrative Adjudication by State Agencies.

Currently, Government Code Section 11501 does not list the Department of Corrections among those agencies which are required to follow the Administrative Procedures Act in regards to administrative adjudication, e.g. determinations concerning inmate rights.

However, the "Tentative Recommendation," is so broadly written, that it could be construed to include the Department of Corrections' decisions regarding inmates as within those requiring elaborate hearings and procedures. For example, proposed Section 641.110 [entitled: When adjudication proceedings are required] states:

- (a) *An agency shall conduct a proceedings under this part as the process of formulating and issuing a decision for which a hearing or other adjudicative proceeding is required by the federal or state constitution or by statute.*

Proposed Section 610.310 defines covered agency "decisions."

Decisions means an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person.

While no California statute generally requires hearings for administrative actions affecting inmate, ward, civil addict or parolee rights, the *Due Process Clause* has often been interpreted to guarantee such person in "custody" minimal hearing rights in certain situations. See *Hewitt v. Helms* (1987) 482 U.S. 755, 107 S.Ct. 2672.

Let us use the example of parole revocation hearings to illustrate our argument -- that formal APA-type hearings are inappropriate for administrative determinations regarding those persons in custody.

Parole revocation hearings are mandated by Morrissey v. Brewer (1972) 408 U.S. 472 as explicated by subsequent United States Supreme Court and California appellate court decisions.

Under the provisions of Chapter 695, Statutes of 1992, effective September 15, 1992, the Parole Hearings Division (PHD) of the Department of Corrections succeeded to specified hearing functions of the Board of Prison Terms (BPT). The BPT now provides life parole consideration hearings in which it determines the suitability for parole of life prisoners, and if suitable, the term of imprisonment,¹ the status of any prisoner under the provisions of section 2962 (mentally disordered offenders) and the revocation of parole of these two classes of persons.² The Parole Hearings Division provides parole revocation hearings for all determinately sentenced prisoners, except those under the provisions of section 2962.³

The issues at these hearings is whether or not the parolee has violated a condition of parole, and if so, what the disposition should be. There is only one "respondent" at any revocation or revocation extension hearing, the parolee, and no other "party." There is no lawyer representing the state, and a lawyer for the parolee only is permitted by PHD for good cause.⁴ Under our regulations a parolee is not entitled to representation unless needed, and in cases of indigency the state pays the attorney.⁵

Since the maximum time which the parolee may be returned to custody or extended is one year (usually less with credits)⁶ the time frames set forth in the

proposal would probably violate the "reasonable" time periods in BPT regulations⁷ and mandated by Morrissey. Trial Court decisions in Riverside and Solano counties have mandated hearings in 45 and 30 days from the date of the "parole hold," a term, like many others common to our proceedings, not contemplated by these proposals.

The pleading and hearing proposals are inconsistent with the reality of our hearing process. All hearings are held in the institution where the parolee is held unless his or her rights to witnesses would be jeopardized. This would violate proposed Government Code section 642.430.

1. Penal Code section 3041

2. Penal Code section 3000

3. Penal Code section 3000

4. Gagnon v. Scarpelli (1973) 411 U.S. 778

5. 15 CCR § 2960 and following, In re Love (1974) 11 Cal.3d 179; see also People v. Qjeda (1986) 186 Cal.App.3d 302

6. Penal Code section 3057

7. 15 CCR § 2840

So few of the proposed provisions would be appropriate to our process that the cost of designing and adopting exempting regulations would far outweigh any overall benefit to the administrative adjudication process. The Parole Hearings Division alone projects it will conduct approximately 15,400 hearings, 34,300 screenings (charges settled without hearings), 115,200 central office calendar actions (for example determination of discharge from parole,⁸ appeals of denials of attorneys at revocation hearings⁹) this year.

Accordingly, we believe that the Department of Corrections should be excluded from the proposal. We also note that similar arguments would be advanced by the Board of Prison Terms,¹⁰ the Narcotic Addict Evaluation Authority,¹¹ and the Youthful Offender Parole Board.¹² All of these entities deal only with liberty interests of prisoners and parolees and not property interests unlike all other state agencies holding hearings applying generally to property interests.

Conclusion

Since the language of the Commission's "Tentative Recommendation" could be read so as to require APA-type hearings for inmates where case law intends only minimal process and hearings, the Department requests that the Department and related entities [the Board of Prison Terms, the Youth Authority, the Youthful Offender Parole Board, and the Narcotic Addict Evaluation Authority] be expressly exempted from the requirements of the Act.

Recommendation

Thus, the Department recommends that the Commission's proposed Section 612.110 [entitled: Application of division to state] be amended to add Subsection 612.110(d), as follows:

612.110(d)

All adjudications concerning the rights of inmates, wards, civil addicts, parolees and others conducted by the Department of Corrections, the Board of Prison Terms, the Youth Authority, the Youthful Offender Parole Board or the Narcotic Addiction Evaluation Authority.

8. Penal Code section 3001

9. 15 CCR § 2055

10. Penal Code sections 3000, 3057, 5075 and following

11. Welfare and Institutions Code section 3152 and following

12. Welfare and Institutions Code section 1767.3

We appreciate your consideration of this request and ask that we be added to your mailing list as to this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerold A. Prod", with a stylized flourish at the end.

JEROLD A. PROD
Deputy Director, Legal Affairs Division

cc: Professor Michael R. Asimow, School of Law, UCLA
Judith A. McGillivray, Deputy Director, Parole Hearings Division
Michael Neal, Assistant Director, Legislative Liaison
John Monday, Deputy Secretary, Youth & Adult Correctional Agency
John W. Gillis, Chair, Board of Prison Terms
William M. Pruitt, Chair, Youthful Offender Parole Board
Nancy B. Dooley, Chair, Narcotic Addict Evaluation Authority

Exhibit

Statutes on Parole Hearings

BOARD OF PRISON TERMS

Pen. Code § 2966. Administrative hearing on eligibility for treatment; superior court hearing; continuation of treatment

2966. (a) A prisoner may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing if so requested, for the purpose of proving that the prisoner meets the criteria in Section 2962. At the hearing, the burden of proof shall be on the person or agency who certified the prisoner under subdivision (d) of Section 2962. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in Section 2978. The prisoner shall be informed at the hearing of his or her right to request a trial pursuant to subdivision (b). The Board of Prison Terms shall provide a prisoner who requests a trial, a petition form and instructions for filing the petition.

(b) A prisoner who disagrees with the determination of the Board of Prison Terms that he or she meets the criteria of Section 2962, may file in the superior court of the county in which he or she is incarcerated or is being treated a petition for a hearing on whether he or she, as of the date of the Board of Prison Terms hearing, met the criteria of Section 2962. The court shall conduct a hearing on the petition within 60 calendar days after the petition is filed, unless either time is waived by the petitioner or his or her counsel, or good cause is shown. The order of the Board of Prison Terms shall be in effect until the completion of the court proceedings. The court shall advise the petitioner of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the petitioner shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing; however, in order to reduce costs, the rules of criminal discovery, as well as civil discovery, shall be applicable. The standard of proof shall be beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney.

(c) If the Board of Prison Terms continues a parolee's mental health treatment under Section 2962 when it continues the parolee's parole under Section 3001, the procedures of this section shall only be applicable for the purpose of determining if the parolee has a severe mental disorder, whether the parolee's severe mental disorder is not in remission or cannot be kept in remission without treatment, and

whether by reason of his or her severe mental disorder, the parolee represents a substantial danger of physical harm to others.

Pen. Code § 3041. When determination may be made; setting of release dates

3041. (a) In the case of any prisoner sentenced pursuant to any provision of law, other than Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, the Board of Prison Terms shall meet with each such inmate during the third year of incarceration for the purposes of reviewing the inmate's file, making recommendations, and documenting activities and conduct pertinent to granting or withholding post-conviction credit. One year prior to the inmate's minimum eligible parole release date a panel consisting of at least two commissioners of the Board of Prison Terms shall again meet with the inmate and shall normally set a parole release date as provided in Section 3041.5. The release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of the crime for which the prisoner was sentenced and other factors in mitigation or aggravation of the crime. At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person on the hearing panel may request review of any decision regarding parole to the full board for an en banc hearing. In case of such a review, a majority vote of the full Board of Prison Terms in favor of parole is required to grant parole to any prisoner.

(b) The panel or board shall set a release date unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed at this meeting.

(c) For the purpose of reviewing the suitability for parole of those prisoners eligible for parole under prior law at a date earlier than that calculated under Section 1170.2, the board shall appoint panels of at least two persons to meet annually with each such prisoner until such time as the person is released pursuant to such proceedings or reaches the expiration of his term as calculated under Section 1170.2.

Pen. Code § 3041.1. Governor's authority to request review; en banc review

3041.1. Up to 90 days prior to a scheduled parole release date, the Governor shall have the power to request review of any decision concerning the grant or denial of parole to any prisoner in a state prison. The Governor shall state the reason or reasons for the request, and whether the request is based on a public

safety concern, a concern that the gravity of current or past convicted offenses may have been given inadequate consideration, or on other factors. When a request has been made, the full board, sitting en banc, shall review the parole decision. In case of a review, a vote in favor of parole by a majority of the current board members shall be required to grant parole to any prisoner. In carrying out any review, the board shall comply with the provisions of this chapter.

Pen. Code § 3041.2. Review of parole decision by governor

3041.2. (a) During the 30 days following the granting, denial, revocation, or suspension by a parole authority of the parole of a person sentenced to an indeterminate prison term based upon a conviction of murder, the Governor, when reviewing the authority's decision pursuant to subdivision (b) of Section 8 of Article V of the Constitution, shall review materials provided by the parole authority.

(b) If the Governor decides to reverse or modify a parole decision of a parole authority pursuant to subdivision (b) of Section 8 of Article V of the Constitution, he or she shall send a written statement to the inmate specifying the reasons for his or her decision.

Pen. Code § 3041.5. Right of prisoner to attend and participate in meetings

3041.5. (a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing, or rescinding of parole dates, the following shall apply:

(1) At least 10 days prior to any hearing by the Board of Prison Terms, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his or her own behalf.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner shall have rights set forth in paragraphs (3) and (4) of subdivision (c) of Section 2932.

(b)(1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his or her parole date, the conditions he or she must meet in order to be released on the date set, and the consequences of failure to meet those conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated.

The board shall hear each case annually thereafter, except the board may schedule the next hearing no later than the following:

(A) Two years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding.

(B) Three years after any hearing at which parole is denied if the prisoner has been convicted, in the same or different proceedings, of more than one offense which involves the taking of a life, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding.

(C) Five years after any hearing at which parole is denied if the prisoner has been convicted, in the same or different proceedings, of more than two murders, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding in writing. If the board defers a hearing five years, the prisoner's central file shall be reviewed by a deputy commissioner within three years at which time the deputy commissioner may direct that a hearing be held within one year. The prisoner shall be notified in writing of the deputy commissioner's decision.

(3) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for that action and shall offer the prisoner an opportunity for review of that action.

(4) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing within 12 months and in accordance with paragraph (2).

Pen. Code § 3041.7. Right to counsel at parole hearing for life prisoner; notice to prosecutor and Attorney General

3041.7. At any hearing for the purpose of setting, postponing, or rescinding a parole release date of a prisoner under a life sentence, such prisoner shall be entitled to be represented by counsel and the provisions of Section 3041.5 shall apply. The Board of Prison Terms shall provide by rule for the invitation of the prosecutor of the county from which the prisoner was committed, or his representative, to represent the interests of the people at any such hearing. The Board of Prison Terms shall notify the prosecutor and the Attorney General at least 30 days prior to the date of the hearing.

Notwithstanding Section 12550 of the Government Code, the prosecutor of the county from which the prisoner was committed, or his representative, who shall not be the Attorney General, shall be the sole representative of the interests of the people.

Pen. Code § 3042. Notice of meetings; records; findings

3042. (a) At least 30 days before the Board of Prison Terms meets to review or consider the parole suitability or the setting of a parole date for any prisoner sentenced to a life sentence, the board shall send written notice thereof to each of the following persons: the judge of the superior court before whom the prisoner was tried and convicted, the attorney who represented the defendant at trial, the district attorney of the county in which the offense was committed, the law enforcement agency that investigated the case, and where the prisoner was convicted of the murder of a peace officer, the law enforcement agency which had employed that peace officer at the time of the murder.

(b) The Board of Prison Terms shall record all such hearings and transcribe recordings of those hearings within 30 days of any hearing. Those transcripts, including the transcripts of all prior hearings, shall be filed and maintained in the office of the Board of Prison Terms and shall be made available to the public no later than 30 days from the date of the hearing. No prisoner shall actually be released on parole prior to 60 days from the date of the hearing.

(c) At any hearing, the presiding hearing officer shall state his or her findings and supporting reasons on the record.

(d) Any statements, recommendations, or other materials considered shall be incorporated into the transcript of the hearing, unless the material is confidential in order to preserve institutional security and the security of others who might be endangered by disclosure.

(e) This section shall not apply to any hearing held to consider advancing a prisoner's parole date due to his or her conduct since his or her last hearing.

Pen. Code § 3043. Victim's statements; public safety determination

3043. Upon request, notice of any hearing to review or consider the parole suitability or the setting of a parole date for any prisoner in a state prison shall be sent by the Board of Prison Terms at least 30 days before the hearing to any victim of a crime committed by the prisoner, or to the next of kin of the victim if the victim has died. The requesting party shall keep the board apprised of his or her current mailing address. The victim, next of kin, or two members of the victim's immediate family have the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his or her views concerning the crime and the person responsible. The board, in deciding whether to release the person on parole, shall consider the statements of victims, next of kin, and immediate family members of the victim made pursuant to this section and shall include in its

report a statement of whether the person would pose a threat to public safety if released on parole.

In those cases where there are more than two immediate family members of the victim who wish to attend any hearing covered in this section, the board may, in its discretion, allow attendance of additional immediate family members or limit attendance to the following order of preference: spouse, children, parents, siblings, grandchildren, and grandparents.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

Pen. Code § 3043.1. Support person for victim appearing at parole hearing

3043.1. Notwithstanding any other provision of law, a victim, his or her next of kin, or any immediate family member of the victim who appears at any hearing to review or consider the parole suitability or the setting of a parole date for any prisoner pursuant to Section 3043 shall be entitled to the attendance of one person of his or her own choosing at the hearing for support. The person so chosen shall not participate in, the hearing nor make comments while in attendance.

Pen. Code § 3043.2. Statement of victim in lieu of appearance at hearing

3043.2. (a) In lieu of personal appearance at any hearing to review the parole suitability or the setting of a parole date, the Board of Prison Terms may permit the victim, his or her next of kin, or immediate family members to file with the board a written, audiotaped, or videotaped statement expressing his or her views concerning the crime and the person responsible. The board shall consider any statement filed prior to reaching a decision, and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.

(b) Whenever an audio or video statement is filed with the board, a written transcript of the tape shall also be provided by the person filing the statement.

(c) Nothing in this section shall be construed to prohibit the prosecutor from representing to the board the views of the victim, his or her immediate family members, or next of kin.

(d) In the event the board permits an audio or video statement to be filed, the board shall not be responsible for providing any equipment or resources needed to assist the victim in preparing the statement.

Pen. Code § 3043.3. "Immediate family"

3043.3. As used in Sections 3043, 3043.1, and 3043.2, the term "immediate family" shall include the victim's spouse, parent, grandparent, brother, sister, and children or grandchildren who are related by blood, marriage, or adoption.

Pen. Code § 3043.5. Right of interested persons to submit statement of views

3043.5. (a) This section shall be known as the "Condit-Nolan Public Participation in Parole Act of 1984."

(b) Any person interested in the grant or denial of parole to any prisoner in a state prison shall have the right to submit a statement of views in support of or in opposition to the granting of parole. The board, in deciding whether to release the person on parole, shall review all information received from the public to insure that the gravity and timing of all current or past convicted offenses have been given adequate consideration and to insure that the safety of the public has been adequately considered. Upon completion of its review, the board shall include in its report a statement that it has reviewed all information received from the public and its conclusion as to whether the person would pose a threat to the public safety if released on parole.

Pen. Code § 3046. Person sentenced to life term; statements and recommendations to be considered by board in considering parole

3046. No prisoner imprisoned under a life sentence may be paroled until he or she has served at least seven calendar years or has served a term as established pursuant to any other section of law that establishes a minimum period of confinement under a life sentence before eligibility for parole, whichever is greater. Where two or more life sentences are ordered to run consecutively to each other pursuant to Section 669, no prisoner so imprisoned may be paroled until he or she has served at least seven calendar years, or has served a term as established pursuant to any other section of law that establishes a minimum period of confinement under a life sentence before eligibility for parole, on each of the life sentences which are ordered to run consecutively, whichever is greater. The Board of Prison Terms shall, in considering a parole for a prisoner, consider all statements and recommendations which may have been submitted by the judge, district attorney, and sheriff, pursuant to Section 1203.01, or in response to notices given under Section 3042, and recommendations of other persons interested in the granting or denying of the parole. The board shall enter on its order granting or denying parole to these prisoners, the fact that the statements and recommendations have been considered by it.

Pen. Code § 3062. Authority of Governor to revoke paroles and order apprehension and reimprisonment of parolees; effect of order

3062. The Governor of the state shall have like power to revoke the parole of any prisoner. The written authority of the Governor shall likewise be sufficient to authorize any peace officer to retake and return any prisoner to the state prison. The Governor's written order revoking the parole shall have the same force and effect and be executed in like manner as the order of the parole authority.

Pen. Code § 3063. Necessity of cause for suspension and revocation; statement in order

3063. No parole shall be suspended or revoked without cause, which cause must be stated in the order suspending or revoking the parole.

Pen. Code § 3063.5. Receipt of police reports; confidential information

3063.5. In parole revocation proceedings, a parolee or his or her attorney shall receive a copy of any police, arrest, and crime reports, and child abuse reports made pursuant to Sections 11166 and 11166.2 pertaining to such proceedings. Portions of those reports containing confidential information need not be disclosed if the parolee or his or her attorney has been notified that confidential information has not been disclosed. Portions of child abuse reports made pursuant to Sections 11166 and 11166.2 containing identifying information relating to the reporter shall not be disclosed. However, the parolee or his or her attorney shall be notified that information relating to the identity of the reporter has not been disclosed.

Pen. Code § 3063.6. Panel for parole revocation and extension proceedings

3063.6. Parole revocation proceedings and parole revocation extension proceedings may be conducted by a panel of one person.

YOUTHFUL OFFENDER PAROLE BOARD

Welf. & Inst. Code § 1767. Victim's statements; public safety determination

1767. Upon request, written notice of any hearing to consider the release on parole of any person under the control of the Youth Authority for the commission of a crime or committed to the authority as a person described in Section 602 shall be sent by the Youthful Offender Parole Board at least 30 days before the hearing to any victim of a crime committed by the person, or to the next of kin of the victim if the victim has died. The requesting party shall keep the board apprised of his or her current mailing address.

The victim or next of kin has the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his or her views concerning the crime and the person responsible. The board, in deciding whether to release the person on parole, shall consider the statements of victims and next of kin made pursuant to this section and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

Welf. & Inst. Code § 1767.1. Notice of parole hearing

1767.1. At least 30 days before the Youthful Offender Parole Board meets to review or consider the parole of any person under 18 years of age who has been

committed to the control of the Department of the Youth Authority for the commission of any offense described in subdivision (b) of Section 707, the board shall send written notice of hearing to each of the following persons: the judge of the court which committed the person to the authority, the attorney for the person, the district attorney of the county from which the person was committed, the law enforcement agency that investigated the case, and, where he or she has filed a request for such notice with the board, the victim or next of kin of the victim of the offense for which the person was committed to the authority. The notice to the victim or next of kin of the victim shall be sent to the last mailing address on file with the board.

Each of the persons so notified shall have the right to submit a written statement to the board at least 10 days prior to the scheduled hearing for the board's consideration at the hearing. Nothing in this subdivision shall be construed to permit any person so notified to attend the hearing.

Welf. & Inst. Code § 1767.2. Condition of probation or parole

1767.2. Every order granting probation or parole to any person under the control of the authority who has been convicted of any of the offenses enumerated in Section 290 of the Penal Code shall require as a condition of such probation or parole that such person totally abstain from the use of alcoholic liquor or beverages.

Welf. & Inst. Code § 1767.3. Suspension, cancellation or revocation of parole; return to custody

1767.3. (a) The Youthful Offender Parole Board may suspend, cancel, or revoke any parole and may order returned to custody of the department any person committed to it who is on parole.

(b) The written order of the chairperson of the board is a sufficient warrant for any peace officer to return to the custody of the department any person committed to it who is on parole or who has been permitted his or her liberty on condition.

(c) The written order of the Director of the Department of the Youth Authority is a sufficient warrant for any peace officer to return to the custody of the department, pending further proceedings before the Youthful Offender Parole Board or the Board of Prison Terms, any person committed to, or in the custody of, the department who is on parole or who has been permitted his or her liberty on condition, or for any peace officer to return to the custody of the department any person who has escaped from the custody of the department or from any institution or facility in which he or she has been placed by the department.

(d) All peace officers shall execute the orders in like manner as a felony warrant.

Welf. & Inst. Code § 1767.4. Payment of fees and expenses to return parolee

1767.4. Whenever any person paroled by the Youthful Offender Parole Board is returned to the department upon the order of the board by a peace officer or probation officer, the officer shall be paid the same fees and expenses as are

allowed such officers by law for the transportation of persons to institutions or facilities under the jurisdiction of the department.

Welf. & Inst. Code § 1767.5. Payment of private homes for care of paroled persons

1767.5. The authority may pay any private home for the care of any person committed to the authority and paroled by the Youthful Offender Parole Board to the custody of the private home (including both persons committed to the authority under this chapter and persons committed to it by the juvenile court) at a rate to be approved by the Department of Finance. Payments for such care of paroled persons may be made from funds available to the authority for such purpose, or for the support of the institution or facility under the jurisdiction of the authority from which the person has been paroled.

Welf. & Inst. Code § 1767.6. Right of parolee to receive crime reports pertaining to parole revocation proceedings; disclosure of confidential information

1767.6. In parole revocation proceedings, a parolee or his attorney shall receive a copy of any police, arrest, and crime reports pertaining to such proceedings. Portions of such reports containing confidential information need not be disclosed if the parolee or his attorney has been notified that confidential information has not been disclosed.

Welf. & Inst. Code § 1767.7. Revolving fund; accounting and substantiation; itemized statements

1767.7. A sum may be withdrawn by the authority from the funds available for the support of the authority without at the time furnishing vouchers and itemized statements. This sum shall be used as a revolving fund for payments for the care of persons paroled to private homes as provided in Section 1767.5. At the close of each fiscal year, or at any other time, upon demand of the Department of Finance the money so drawn shall be accounted for and substantiated by vouchers and itemized statements submitted to and audited by the State Controller.

Welf. & Inst. Code § 1767.8. Notice of parole hearing for youthful offender convicted of rape or murder

1767.8. In the case of any person under the control of the Youth Authority for the commission of any offense of rape in violation of subdivision (2) or subdivision (3) of Section 261 of the Penal Code, or murder, written notice of any hearing to consider the release on parole of the person shall be sent by the Youthful Offender Parole Board to the following persons at least 30 days before the hearing: the judge of the court by whom the person was committed to the authority, the attorney for the person, the district attorney of the county from which the person was committed, and the law enforcement agency which investigated the case. The board shall also send written notice to the victim of the rape or the next of kin of the person murdered if he or she requests notice from the board and keeps it apprised of his or her current mailing address.

Welf. & Inst. Code § 1767.9. Notice of parole hearing for offender over 18 convicted of specified violent or serious offenses

1767.9. At least 30 days before the Youthful Offender Parole Board meets to review or consider the parole of any person over 18 years of age who has been committed to the control of the Youth Authority for the commission of any offense described in subdivision (b) of Section 707, the board shall send written notice thereof to each of the following persons: the judge of the court which committed the person to the authority, the attorney for the person, the district attorney of the county from which the person was committed, the law enforcement agency that investigated the case, and, where he or she has filed a request for such notice with the board, the victim or next of kin of the victim of the offense for which the person was committed to the authority. The burden shall be on the requesting party to keep the board apprised of his or her current mailing address.

Each of the persons so notified shall have the right to submit a written statement to the board at least 10 days prior to the scheduled hearing for the board's consideration at the hearing. Nothing in this subdivision shall be construed to permit any person so notified to attend the hearing.

At the hearing the presiding officer shall state findings and supporting reasons for the decision of the board. The findings and reasons shall be reduced to writing, and shall be made available for inspection by members of the public no later than 30 days from the date of the hearing.

NARCOTIC ADDICT EVALUATION AUTHORITY

Welf. & Inst. Code § 3151. Certification that outpatient status; review in absence of certification

3151. After an initial period of observation and treatment, and subject to the rules and policies established by the Director of Corrections, whenever a person committed under Article 2 or Article 3 of this chapter has recovered from his addiction or imminent danger of addiction to such an extent that, in the opinion of the Director of Corrections, release in an outpatient status is warranted, the director shall certify such fact to the authority. If the director has not so certified within the preceding 12 months, in the anniversary month of the commitment of any person committed under this chapter his case shall automatically be referred to the authority for consideration of the advisability of release in outpatient status. Upon any such certification by the director or such automatic certification, the authority may release such person in an outpatient status subject to all rules and regulations adopted by the authority, and subject to all conditions imposed by the authority, whether of general applicability or restricted to the particular person released in outpatient status, and subject to being retaken and returned to inpatient status as prescribed in such rules, regulations, or conditions. The supervision of such persons while in an outpatient status shall be administered by the Department

of Corrections. Such persons are not subject to the provisions of Penal Code Section 2600.

A single member of the authority may by written or oral order suspend the release in outpatient status of such a person and cause him to be retaken, until the next meeting of the authority. The written order of any member of the authority shall be a sufficient warrant for any peace officer to return such persons to physical custody.

It is hereby made the duty of all peace officers to execute any such order in like manner as ordinary criminal process.

Welf. & Inst. Code § 3152. Rules for persons in outpatient status; supervision, testing, and counseling; return to inpatient status

3152. The rules for persons in outpatient status shall include but not be limited to close supervision of the person after release from the facility, periodic and surprise testing for narcotic use, counseling and return to inpatient status at the California Rehabilitation Center or its branches at the discretion of the authority, if from the reports of agents of the Department of Corrections or other information including reports of law enforcement officers as to the conduct of the person, the authority concludes that it is for the best interest of the person and society that this be done.

Welf. & Inst. Code § 3152.5. Right of outpatient to crime reports; disclosure of confidential information

3152.5. In outpatient revocation proceedings, an outpatient or his attorney shall receive a copy of any police, arrest, and crime reports pertaining to such proceedings. Portions of such reports containing confidential information need not be disclosed if the outpatient or his attorney has been notified that confidential information has not been disclosed.

Welf. & Inst. Code § 3153. Halfway houses in large metropolitan areas as pilot projects; rules; control of earnings

3153. The Director of Corrections is authorized to establish one or more halfway houses in large metropolitan areas as pilot projects in order to determine the effectiveness of such control on the addict's rehabilitation, particularly upon his release from the narcotic detention and treatment facility. Rules and regulations governing the operation of such halfway houses shall be established by the Director of Corrections and shall provide for control of the earnings of persons assigned to such halfway houses during their residence there, from which shall be deducted such charges for maintenance as the Director of Corrections may prescribe.

Welf. & Inst. Code § 3154. Participation in methadone maintenance project

3154. A person released in an outpatient status from the California Rehabilitation Center may, with the approval of the Department of Corrections and

the Narcotic Addict Evaluation Authority, voluntarily participate in a methadone maintenance project approved under Section 11876 of the Health and Safety Code.

Participation in a methadone maintenance project shall not be construed to break the abstention from the use of narcotics for the purpose of Section 3200.

Welf. & Inst. Code § 3155. Monetary payment upon release

3155. In addition to any other payment to which he or she is entitled by law, each person who has been committed to the custody of the Director of Corrections pursuant to this chapter shall, upon his or her release, be paid the sum of two hundred dollars (\$200), from such appropriations that may be made available for the purposes of this section.

The director may prescribe rules and regulations (a) to limit or eliminate any payments provided for in this section to persons who have not been confined at least six consecutive months prior to their release in instances where the director determines that such a payment is not necessary for the rehabilitation of the prisoner, and (b) to establish procedures for the payment of the sum of the two hundred dollars (\$200) within the first 60 days of a prisoner's release.

The provisions of this section shall not be applicable if the person is released to the custody of another state or to the custody of the federal government, nor shall they apply to persons discharged pursuant to Section 3109 who subsequently, as a result of such discharge, are committed to state prison.

Welf. & Inst. Code § 3156. Promulgation and filing of rules and regulations; availability

3156. (a) Any rules and regulations, including any resolutions and policy statements, promulgated by the authority, shall be promulgated and filed pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall, to the extent practical, be stated in language that is easily understood by the general public.

(b) The authority shall maintain, publish, and make available to the general public, a compendium of its rules and regulations, including any resolutions and policy statements, promulgated pursuant to this section.

(c) The following exceptions to the procedures specified in this section apply to the authority: The chairman may specify an effective date that is any time more than 30 days after the rule or regulation is filed with the Secretary of State; provided that no less than 20 days prior to that effective date, copies of the rule or regulation shall be posted in conspicuous places throughout each institution and shall be mailed to all persons or organizations who request them.

Welf. & Inst. Code § 3157. Issuance of subpoenas by Narcotic Addict Evaluation Authority

3157. The Chairman of the Narcotic Addict Evaluation Authority shall have the authority of a head of a department set forth in subdivision (e) of Section 11181 of the Government Code to issue subpoenas as provided in Article 2 (commencing with Section 11180) of Chapter 2 of Division 3 of Title 2 of the Government

Code. The authority shall adopt regulations on the policies and guidelines for the issuance of regulations.